



CHARTER REVIEW COMMITTEE

Monday, March 7, 2016, 4:30 P.M.
City Hall Meeting Room (1st Floor)
City Hall, 255 W. Alameda
Tucson, Arizona 85701

Legal Action Report

1. Roll Call

Meeting was called to order by Chairwoman Bonnie Poulos at 4:31 p.m. Those present and absent were:

Present:

Bruce Burke	Member, Mayor's Office
Tom Burke	Member, City Manager's Office
Mark Crum	Member, Ward 6
Randi Dorman	Member, Ward 5
Tannya Gaxiola	Member, Ward 3
John Hinderaker (arrived at 5:55 p.m.)	Member, Ward 6
B. Joseph Howell	Member, Ward 1
Luke Knipe	Member, Ward 1
Bonnie Poulos	Member, Ward 3
Tom Prezelski (arrived at 6:26 p.m.)	Member, Ward 2
Jeff Rogers	Member, Mayor's Office
D. Grady Scott (arrived at 4:37 p.m.)	Member, Ward 5
John Springer (arrived at 4:41 p.m.)	Member, Ward 4

Absent:

Leonard (Lenny) Porges	Member, Ward 2
Moon Joe Yee	Member, Ward 4

Staff Members Present:

Michael Rankin, City Attorney
Roger W. Randolph, City Clerk
Deborah Rainone, Chief Deputy City Clerk
Suzanne Mesich, Assistant City Clerk
Yolanda Lozano, City Clerk's Office
Raphe Sonenshein, Facilitator

2. Approval of Minutes and Legal Action Report from the meeting of February 22, 2016 meeting

It was moved by Committee Member Crum, duly seconded, and CARRIED by a voice vote of 9 to 0 (Committee Members John Hinderaker, Lenny Porges, Tom Prezelski, Grady Scott, John Springer and Joe Yee absent), to approve the Minutes from the February 22, 2016, meeting as presented.

It was moved by Committee Member Knipe, duly seconded, and CARRIED by a voice vote of 9 to 0 (Committee Members John Hinderaker, Lenny Porges, Tom Prezelski, Grady Scott, John Springer and Joe Yee absent), to approve the Legal Action Report from the February 22, 2016, meeting as presented.

3. Call to the Audience

Richard Hernandez addressed the Committee about his concerns regarding a ward only election process.

Ruth Beeker addressed the Committee about the City's election process.

(NOTE: Committee Member Scott arrived at 4:37 p.m. and Committee Member Springer arrived at 4:41 p.m.)

4. Discussion Regarding Form of City Elections

Introductory comments were made by Chairwoman Bonnie Poulos.

Presentation was made by Dr. Raphe Sonenshein, Consultant, explaining each of the four forms of City Elections; the Current System, All District (Ward only), Hybrid: District + At-Large, and At-Large, that had been previously discussed by the Committee. His presentation also included discussion on the membership of the council in each of the systems, how they should be elected, election dates, election rules, when the Mayor and Council should be elected, constituency services, salaries, staff costs, campaign finance and cost of elections.

Dr. Sonenshein said, once the Committee made its recommendation to the Mayor and Council, they could include some matters for the Mayor and Council to consider later either by the current Committee or a future committee, such as moving election dates to even numbered years and aligning mayoral, at-large, and ward only elections. He said there was nothing wrong in the Committee highlighting in their recommendation some "next steps" for the Mayor and Council to consider.

Committee Member Dorman asked if there was an update on the decision by the 9th Circuit Court of Appeals. She asked for confirmation on the Court's ruling if their default position was that the City should conduct at-large elections and not ward only should the current system be deemed unconstitutional.

Michael Rankin, City Attorney, responded there was nothing new to report, he was still waiting to hear from the 9th Circuit Court of Appeals whether or not they were going to rehear the case. In answer to the ruling, he said he would not go so far in characterizing the decision as stated, but certainly the constitutional flaw that the 9th Circuit was more in the exclusion of participation in the Primary Election vs. the inclusion of city-wide General.

Mr. Rankin stated part of the Court's decision was that the City could do one or the other, but could not have the two different types of elections. In other words, have a ward only, ward only, or at-large, at-large elections. He said if you drilled down to the analysis of the decision, the defect the Court found was excluding voters from participating in the Primary vs. the inclusion of all voters in the General.

Ms. Dorman said if the Committee did nothing with the current system or if the voters rejected what was put forth and the ruling came in that the current system was unconstitutional, what would happen.

Mr. Rankin said, in that instance, his recommendation to the Mayor and Council would be to have a city-wide, city-wide election because that would be constitutionally compliant with the Court's decision assuming it did not change and, in his estimation, would be the most consistent with the Charter. He said, it would conflict with the part in the Charter that stated candidates would be nominated by ward, although, he felt it would comply with the requirement that they be elected at-large. He said how the representatives of the City were elected was the more fundamental issue than how they were nominated.

Committee Member Rogers asked if there had been any increase in the number of jurisdictions that joined the City in their request for en banc review by the 9th Circuit Court of Appeals.

Mr. Rankin stated Washington State had joined amicus on the side of the City and there had been no other jurisdictions since.

Mr. Rogers asked if it was possible to put something on the ballot that was an either or question that asked the voter to choose one or two options with the one receiving the greater amount of votes winning.

Mr. Rankin said, any kind of election questions put forth on a ballot should point to plain statutory authority that allowed them to do it that way. He said in the absence of express authority to put something on the ballot you would be taking a risk. He said the form of the ballot question required the City to present the questions to the voters as a yes or no. He said the requirements of the ballot itself would have to explain the effects of a yes or no vote.

Mr. Rankin stated there was no authority, that he could find, that said you could put forth multiple choice types of questions to the voters. He said Mr. Rogers' question was a good question, because he knew it was something the Mayor and Council would be discussing.

Mr. Rankin also said that if two proposals were put on the ballot and they both passed, then the one with the most votes would be the one to control. However, if they both failed to get at least 50% of the votes cast, the City could not go with the one that received the most votes because the question had to have been affirmatively approved by the voters. He said, in that instance, both questions failed and the Charter would remain unchanged.

Mr. Rogers stated that in his discussions regarding the hybrid process with the Mayor and some Council Members since the Committee's last meeting, there seemed to be concern about the at-large members becoming somewhat of an oppositional force with the mayor and asked what the experience was with other jurisdictions using this system.

Dr. Sonenshein stated that was a very reasonable concern. Many of the cities using this process were very new and the older ones, like Boston, the Mayor's role was so strong that the at-large members were not seen as a serious threat. He said in New York there were positions like this that were challenging and it really depended on who the people were and who elected them. He said it was a legitimate concern because it did change the chemistry of the council.

Mr. Rankin said he had some follow-up information to the question about what would happen if the court case did not change and the Charter did not change. He said the case would ultimately get remanded back to the District Court, the first level of court, to fashion a remedy consistent with the Court's decision. He said at that point in the proceedings the City would present to the Court what they thought would be compliant with the system going forward assuming the Charter did not change and get direction from the Court and not just rely on the opinion of the attorneys.

Commissioner Howell asked if there was a timeline on how all of this played out, and stated that effectively, the Mayor and Council could put something before the citizens for a vote before the ruling was final.

Mr. Rankin said there was no set timeline and the Court did not have to act. He said he was hopeful, one way or another, that the 9th Circuit would consider re-hearing the case. He said the Court typically met when they could get the eleven judges together to hear a case en banc which was typically three times a year, March, July, and November.

Ms. Poulos commented that the bottom line was that the Committee should not base their decision on the court's decision.

Ms. Dorman stated that she too had spoken to a couple of Council Members who commented that the April 1st deadline did not matter and was not as crucial as the Committee thought.

Mr. Rogers stated he agreed and had heard the same thing.

Committee Member Knipe asked if the three options being discussed District/Ward Only, Hybrid, and/or At-Large, mitigated the defects found by the lawsuit.

Mr. Rankin answered in the affirmative for all three options.

Dr. Sonenshein stated he wanted to take a vote on where the Committee stood on the four options. He explained how the voting would take place in reaching a consensus. He said the goal was not just to win a decision but to reach something closer to a consensus. He proposed a simple modification around what the Committee was trying to accomplish. He explained that everyone would have a 1st and 2nd choice. The 1st and 2nd choice numbers would be added up, and then the 2nd choice numbers would be allocated on to the 1st choice numbers. This would give an idea which alternative had the most 1st and 2nd choice votes.

Dr. Sonenshein said it might not turn out any different, but it would give people the opportunity to vote for something that might not otherwise get heard. He said it was a useful option in reaching a consensus.

Mr. Rogers stated he had spoken to quite a few people regarding the issues at hand and wanted to make a motion to go with the hybrid system (mayor, 6 council members [ward only] and 2 at-large members), leaving the wards as they currently were, retaining partisan elections and eliminate staggered elections, but leave the election on the odd numbered years.

Each Committee Members had the opportunity to state their 1st and 2nd choice for which election system they preferred and the reasons why. Discussion was held and the results of the Committee's choices were as follows:

Current System	Ward Only	Hybrid: District + At-Large	At-Large
1 - Crum	1 - Burke, T	1 - Rogers	
1 - Springer	1 - Scott	1 - Knipe	
1 - Poulos	1 - Burke, B	1 - Dorman	
		1 - Gaxiola	
		1 - Howell	
		1 - Hinderaker	
2 - Rogers	2 - Knipe	2 - Burke, T	
2 - Dorman	2 - Crum	2 - Burke, B	
2 - Gaxiola	2 - Hinderaker	2 - Springer	
2 - Howell		2 - Poulos	
2 - Scott			
1st choice = 3	1st choice = 3	1st choice = 5 6	1st choice = 0
2nd choice = 5	2nd choice = 2 3	2nd choice = 4	2nd choice = 0
Total = 8	Total = 5 Total = 6	Total = 9 Total = 10	Total = 0

Roger W. Randolph, City Clerk, reported that the totals were 3/1st choices and 5/2nd choices for the Current System; 3/1st choices and 2/2nd choices for the Ward Only system; 5/1st choices and 4/2nd choices for the Hybrid system and no votes for the At-Large system. (The corrections in **blue** were as a result of Committee Member Hinderaker's choices once he arrived at the meeting.)

Dr. Sonenshein recapped the results stating the Current System and the Hybrid System had the strongest support from the Committee. He said the next step was to get to a point where perhaps some debate and discussion took place between the two systems and the Committee could get to a majority vote on one.

Ms. Dorman stated that given the fact that one of the top two systems was the City's current system, would the Committee have to choose if they wanted to place it on the ballot or would they be choosing an alternate.

Dr. Sonenshein clarified that this was not yet a question about what should appear on the ballot, it was a question about what the Committee's recommendation was on the best system to put forth to the voters.

Discussion continued regarding the importance of something being put forward, that it be easy or simple to understand, what the best form of governance was, presenting the best options possible, being prepared to explain to what end at-large members should be added, incurred costs, representation, timing of the elections, staggered elections, and campaign finance.

(NOTE: Committee Member Hinderaker arrived at 5:55 p.m.)

Dr. Sonenshein commented that from the discussions and the voting that took place, he was hearing that the 1st and 2nd choices, of at least eight people, showed that they liked the current system. He said that could be expressed as part of the Committee's communication or recommendation to the Mayor and Council. Second, he said, he was also hearing that the Committee did not want to go to an At-Large system as an alternative to the current system. Thirdly, although there was some disagreement between Ward Only and Hybrid, those two systems overlapped in the area of consensus in having six members of the city council elected by district.

Ms. Poulos, at this point, gave Committee Member Hinderaker the opportunity to state his 1st and 2nd choices on the type of elections system he preferred.

Committee Member Hinderaker stated his 1st choice was the Hybrid System and his 2nd choice was Ward Only.

Discussion continued regarding staggered elections, the loss of institutional knowledge when moving away from staggered elections, term limits, and the resign to run law.

Dr. Sonenshein said the conversation between Ward Only and Hybrid systems was the right conversation to be had. He said a lot of progress had been made that evening and a final decision did not need to be made. He suggested using the method of “straw votes” to see where everyone currently stood given all of the discussion.

Ms. Poulos stated that should the current form of elections not be retained, a District or At-Large election could be recommended. She said she sensed that no one on the Committee wanted an At-Large form of election and thought that some form of District election was what they wanted and would support in the event that the Committee did not get its first choice. She asked if District or Hybrid elections would be the preferred form of elections. Using a show of hands, there were no dissensions to her question.

Ms. Poulos continued saying that those Committee members that liked the current system should recognize that if it was voted down by the Courts, an At-Large form of election would probably be the outcome of the Court’s decision. She also commented she felt the sense of the Committee was that regardless of which form of election was chosen, staggered elections should go away and mayor and council members should all be elected at the same time. She asked if that was true and the Committee was in consensus.

Discussion continued regarding the pros and cons of the two forms of elections being considered, Hybrid (Mayor and six (6) Council Members + two (2) At-Large members) and District (Ward Only). At the conclusion of the discussion, a vote was taken and seven (7) Committee members supported a Hybrid form of election and five (5) supported the District (Ward only) form of election.

Ms. Poulos suggested that for the next meeting, she hoped someone would come prepared to make a motion on which form of election should be recommended to the Mayor and Council.

Mr. Hinderaker asked, should the 9th Circuit Court of Appeals deem the current system to be constitutional, what would happen then, was there still a desire from the Committee to move toward a different form of election.

Committee Member Knipe stated that the formation of the Committee was an outgrowth of community interest not because of what was going on with the 9th Circuit. He said he felt they were reconvened because of on-going interest in making improvements to the City Charter.

Ms. Dorman said she primarily agreed with Mr. Knipe but for her the Court’s ruling would make a difference because she could support the current system or the Hybrid system, but it was very challenging for her to go to a Ward Only system.

Ms. Poulos stated that for her, as a member of the Committee, she wanted to offer a well thought out recommendation to the Mayor and Council that was different from the current system to provide better representation for people who did not feel they were being represented.

Ms. Poulos asked the Committee to think about the discussions held and be prepared at the next meeting to come up with some type of recommendation/motion for the Mayor and Council.

5. Discussion of Current and Proposed Charter Taxing and Bonding Limitations, including Limitations related to Sales Tax and Property Taxes

Introductory comments were made by Chairwoman Poulos. She reminded the Committee that they had already taken two conditional votes regarding the pledging of excise tax and removing the cap on the secondary property tax, but a recommendation/vote was put off on the sales tax until the results of the poll had been received.

Ms. Poulos stated that after reading the summary from the poll, simply raising the sales tax by half a percent was a hard sell, but people were much more supportive of an increase in the sales tax should it be tied to particular projects or earmarked very seriously for specific programs/equipment/construction.

Ms. Poulos continued that in the first iteration of the Committee, they were going to recommend a change to the Charter to allow the Mayor and Council, at their discretion, to take a sales tax increase to the voters. She said that would serve the purpose of leaving the current 2% cap in place, which was currently maxed out, but would relieve the Mayor and Council of having to ask the voters for a Charter change to increase and change the cap as necessary.

Ms. Poulos said that a good number of the members of the current Committee wanted to unfetter the Mayor and Council and essentially remove the cap and/or recommend a higher cap with or without voter approval. She said she wanted to give the Committee the opportunity to indicate their thoughts and come up with some type of agreement for a recommendation to the Mayor and Council.

Discussion was held regarding options to change the Charter to give the Mayor and Council the authority to go to the voters to exceed the cap, remove the cap altogether, but receive voter approval for any increases (no cap written into the Charter), or increase the cap in the Charter with or without voter approval.

Committee Member Dorman commented that the recommendation from the previous Committee was to keep the cap at 2%, but with voter approval, the sales tax could be increased above the 2%. She asked if the Mayor and Council, at any time, wanted to go higher than the 2%, was that a Charter change as well as approval from the voters to increase the tax, was it two separate items on the ballot.

Michael Rankin, City Attorney, stated that the voters were being asked to approve a higher tax and amend the Charter. He said it had been tried a couple different ways over the years, as a single question where the Charter would be amended to allow for a higher tax or as two questions, to amend the Charter to allow for the higher tax upon voter approval and a specific question for the tax.

Mr. Rankin stated the recommendation from the last go round would have taken care of that first step such that any future proposal to raise the sales tax above the 2% did not have to be put before the voters as a Charter change or with any reference to the Charter.

Ms. Dorman asked, from a structural standpoint within the City, was there any disadvantage from having the 2% number remain in the Charter and vote on any increases above that vs. actually increasing the number.

Mr. Rankin said it was just different implications. He said having a number in the Charter was the cap until the Charter was changed. He said that flexibility could be built in it by including the words, unless otherwise approved by the voters. He said the other alternative was to change the cap in the Charter.

(NOTE: Committee Member Prezelski arrived at 6:26 p.m.)

Discussion continued.

Ms. Poulos stated, after listening to the Committee's thoughts regarding the sales tax increase, her sense was that a majority of the Committee was leaning towards removing the cap altogether. She said before sending a recommendation to the Mayor and Council, the Committee needed to look at whether or not a recommendation should be made about separating each of the financial items as separate questions.

Mr. Hinderaker asked how it would work if the cap was removed, but voter approval was required to increase taxes; did that mean that any tax increase, below or above the cap required voter approval. He asked if having the 2% cap gave the Council more flexibility because they had the ability to move up and down within that 2%.

Mr. Rankin said, depending on how the question was written and approved, it could affect raising or lowering taxes either way.

Discussion continued.

Ms. Poulos stated that for the next meeting, someone needed to formulate a motion that they think will pass to present to the Mayor and Council for consideration to put forth to the voters.

Committee Member Prezelski asked that once language on a question was used that states, "otherwise as approved by voters", did that negate the purpose for having a cap on the sales tax.

Mr. Rankin stated that except by adding the cap, it provided for the authority to the assessor to impose the tax, up to the cap, without having to receive voter approval beforehand. He said it could also be looked as an enabling provision to say that up to 2% a sales tax could be imposed without receiving voter approval.

6. Schedule of Future Committee Meetings, including Possible Public Hearings and Schedule for Delivery of Recommendations to the City Mayor and Council

Information was presented by Chairwoman Poulos. She suggested that since the Committee's next meeting on March 21, 2016, was their last meeting, Committee members should be prepared to possibly stay past their normal meeting time to complete their assignment.

7. Call to the Audience

Richard Hernandez addressed the Committee on his concerns regarding costs, the cost of democracy, time restraints, trying to do the right thing and limiting how much taxes can be imposed.

Brian Glenn addressed the Committee regarding Ward Only elections.

8 Adjournment

Meeting was adjourned at 7:05 pm.